

The 26th December, 1974

No. 11603-4Lab-74/38049.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workmen and the management of M/s Khanna Tailors, I-K/20, N.I.T. Faridabad.

BEFORE SHRI O.P. SHARMA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA
FARIDABAD

Reference No. 109 of 1974

between

Shri Vasu Dev and the management of M/s Khanna Tailors, 1-K/20, N.I.T., Faridabad.

Present—

Nemo for the workmen.

Shri H.R. Dua alongwith Shri Jai Chand Khanna for the respondent.

AWARD

This judgement will dispose of this and the connected references Nos. 110, 112 and 117 of 1974 which have been consolidated to avoid duplication of work since some common questions of law and fact were involved in all the cases. The facts material for the judgment may briefly be stated as under.

S/Shri Vasu Dev, Madan Lal, Babu Lal and Hashmat Khan workmen concerned were in the service of M/s Khanna Tailors, IK/29, N.I.T., Faridabad. Their services were allegedly terminated by the management without any justification. They demanded reinstatement but without success. The matter was taken up for conciliation which also ended in failure.

On receipt of the failure report in each case, the Governor of Haryana, in exercise of the powers conferred by clause (d) of sub-section (i) of Section 10 of the Industrial Disputes Act, 1947 referred the disputes for adjudication to this Tribunal which were registered as references Nos. 109, 110, 112 and 117 of 1974 respectively. The term of reference in each case being the same as given under :—

“ Whether the termination of services of the workman concerned was justified and in order ? If not, to what relief is he entitled ?”

The parties were called upon to put in their respective pleadings. No statements of claim have been filed on behalf of the workmen concerned and on the last date fixed for this purpose an adjournment had been obtained by their authorised representative on the ground that he could not contact the workmen. No claim statements have been filed even today and the workmen have further elected not to appear and pursue their claims in person or through authorised representative. On the other hand, the management has pleaded that the present claimants, who were engaged on contract basis, had abandoned service of their own accord by absenting themselves from duty, without any proper authorisation, and further that the demand the subject matter of each reference was not first raised on the management and rejected by it so as to constitute an industrial dispute.

Statement of Shri Jai Chand Khanna Partner of the concern has been recorded. He has sown testimony to the above facts. According to him, Shri Vasu Dev had absented himself from duty from 20th January, 1974 while S/Shri Madan Lal, Babu Lal and Hashmat Khan had absented from 22nd February, 1974, without any proper authorisation, and had never turned up to resume their duties. He has further stated that they never raised any demand direct on the management and these very pleas had been taken by the management before the Conciliation Officer also.

In answer to certain court questions Shri Jai Chand Khanna has further stated that S/Shri Hashmat Khan and Vasu Dev had cleared their accounts and received their dues in full and final settlement of their claims. With regard to Bubu Lal and Madan Lal, it has been stated that they had, infact, taken advances of Rs 400 and Rs 200 respectively. According to him the whereabouts of Shri Hashmat Khan are not known while Shri Madan Lal had started his own business at Delhi. However, he has shown his willingness to take back on duty S/Shri Vasu Dev, Madan Lal and Hashmat Khan, if they choose to work in this concern and also to pay to them their dues, if any, for the period before they gave up service by absenting themselves from duty, after adjustment of the advances already made to them but they would not be entitled to any dues after they left the service.

In view of the above, no further proceedings are called for in these cases and there is apparently no reason to disbelieve the statement on oath made by Shri Jai Chand Khanna, Partner of the concern, that these are all cases of self abandonment of service and the demands the subject matter of the references had not been properly raised specially when the workmen concerned are not coming forward to pursue their claims and refute the above plea.

raised on behalf of the management. In the circumstances, the workmen are not entitled to any relief. However since a willingness has been shown on behalf of the management to take S/Shri Vasu Dev, Madan Lal and Hashmat Khan on duty and also to pay to them their dues for the period before they left service of their own accord, after adjustment of the advances allegedly made to them. Their claims do not deserve to be dismissed on the grounds of self abandonment of service and not raising the dispute in the proper manner. But the claim of Babu Lal has got to be dismissed because the management is not prepared to take him back on duty.

So, in view of the facts discussed and reasons aforesaid, the reference in respect of Shri Babu Lal workman concerned (reference No. 112 of 1974) shall stand rejected for want of industrial dispute on account of self abandonment of service by him and not raising the demand direct on the management within the meaning of the law, as laid down in the oft-quoted judgment of Hon'ble the Supreme Court in the Sindhu Re-settlement Corporation case and he is not entitled to any relief by way of reinstatement or payment of back dues. The remaining three workmen S/Shri Vasu Dev, Madan Lal and Hashmat Khan are, however, entitled to reinstatement and payment of their dues, if any, for the period before they gave up service, after adjustment of the advances already taken by them, as stated by the Partner of the concern Shri Jai Chand Khanna, but they would not be entitled to any other dues for the subsequent period. The award in each case is made accordingly, but without any order as to costs.

Dated the 27th November, 1974.)

O.P. SHARMA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 1647, dated the 28th November, 1974.

Forwarded (four copies) to the Secretary to Government of Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

O. P. SHARMA,
Presiding Officer,
Labour Court, Haryana,
Faridabad.

MISS M. SETH,
Commissioner and Secretary to Government,
Haryana, Labour and Employment Departments,

No. 12267-4Lab-74/38053.—In pursuance of the provisions of section 17 of the Industrial Disputes Act 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak, in respect of the dispute between the workman and the Management of M/s Surindera Engineering Works, Pinjore.

BEFORE SHRI O.P. SHARMA, PRESIDING OFFICER, LABOUR COURT, HARYANA, ROHTAK

Reference No. 16 of 1974

Between

SHRI RAM RATTAN AND THE MANAGEMENT OF M/S SURINDER ENGINEERING WORKS,
PINJORE

Present :

Shri R.L. Gupta for the management.

Nemo for the workman.

AWARD

By order No. 100/AMB/314-A-73/5417-21, dated 4th March, 1974 of the Governor of Haryana, the following dispute between the management of M/s Surindera Engineering works Pinjore and its workman Shri Ram Rattan was referred for adjudication to this Court, in exercise of the powers conferred by clause (c) of Sub-section (i) of section 10 of the Industrial Disputes Act, 1947.

“whether the termination of services of Shri Ram Rattan was justified and in order ? If not, to what relief is he entitled ?”

The workman concerned is not coming forward to pursue his claim, in person or through authorised representative nor has any statement of claim been filed in the case. On the other hand, the management has filed the written statement pleading that the services of the present claimant had come to an end as a closure of the business of the management and that when re-called for employment, he had not turned up. It has further been pleaded that the present dispute is not covered by section 2-A of the Industrial Disputes Act, 1947 and as such the reference is bad in law and without jurisdiction.

I have heard the learned representative of the management and considered the facts on record. The very term of reference shows that it is a case of re-employment sought by Shri Ram Rattan workman concerned. The demand notice leading to the reference was given by him in his individual capacity and there is nothing on the record to indicate that any union of the workers had taken up his dispute to give it the character of a collective dispute. His dispute is manifestly not covered by section 2-A of the Industrial Disputes Act which relates only to cases of dismissal, discharge, termination or retrenchment from service. On his own showing the provisions of section 2-A of the Act are not attracted to the facts of the instant case and as such the present reference is bad in law and without jurisdiction.

Otherwise also, the workman concerned is not entitled to any relief in the case especially when he has elected not to appear and prosecute his case. The award is made accordingly, but without order as to costs.

Dated : The 17th December, 1974.

(O.P. SHARMA),
Presiding Officer,
Labour Court, Haryana,
Rohtak.

No. 2897, dated 20th December, 1974.

Forwarded (four copies) to the Secretary to Government of Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

(O. P. SHARMA),
Presiding Officer,
Labour Court, Haryana,
Rohtak.

No. 11623-4Lab-74/38069.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workmen and the management of M/s Chatter Sain Iron Foundry and Re-rolling Mills, Samalkha.

BEFORE SHRI O. P. SHARMA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL,
HARYANA, FARIDABAD

Reference No. 125 of 1974

between

THE WORKMEN AND MANAGEMENT OF M/S CHATTER SAIN IRON FOUNDRY AND
RE-ROLLING MILLS, SAMALKHA

Present :

Shri Raghbir Singh, for the workmen.

Shri Surinder Kaushal, for management.

AWARD

By order No. ID.KNL/157-E-74/31125, dated 11th September, 1974 of the Governor of Haryana the following dispute between the management of M/s Chatter Sain Iron Foundry and Re-rolling Mills, Samalkha was referred for adjudication to this Tribunal in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947.

Whether the workmen of the contractor of Moulding Section should be treated the workmen of the above factory? If not, to what relief they are entitled?

The case was fixed for the filing of the statement of claim on behalf of the workmen concerned. Their authorised representative Shri Raghbir Singh has stated that since most of the workmen at whose instance the present dispute was raised have left service, a fresh demand notice have to be given by the workmen now in service and, therefore, he does not want to proceed with the present reference.

In view of the above, no further proceedings are called for and no dispute award is made but without any order as to costs.

Dated the 28th November, 1974.

O. P. SHARMA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 1648, dated 28th November, 1974

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

O. P. SHARMA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Dated 28th November, 1974.

16936CS(H)—Govt. Press, Chd.

The 10th December, 1974

No. 11651-4Lab-74/118.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workman and the management of M/s Elson Cotton Mills (P) Ltd., Ballabgarh.

BEFORE SHRI O. P. SHARMA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA,
FARIDABAD

Complaint No. 19 of 1974.

between

Shrimati Munni and the management of M/s Elson Cotton Mills (P) Ltd., Ballabgarh.

Present :

Shri Madhusudan Saran Kaushish, for the complainant.
Shri R. N. Raj, for the management.

AWARD

The workman of M/s Elson Cotton Mills (P) Ltd., Ballabgarh had raised a demand for bonus for the year 1970-71 which was referred for adjudication to this Tribunal and registered as reference No. 104 of 1971. Smt. Munni present complainant has brought this complaint with the allegation that during the pendency of this reference, the management had contravened the provisions of section 33 of the Industrial Disputes Act by dismissing her from service on 6th July, 1974 without any justification.

Notice of the complaint was given to the management who has contested the complaint pleading inter-alia that the complainant was not a worker concerned in the said reference. This plea has been accepted on behalf of the complainant, as per the statement of her authorised representative Shri Madhusudhan Saran Kaushish who has, therefore, not pressed the complaint. Smt. Munni was, in fact, not in service during the period for which bonus was claimed by the workmen of the establishment as per reference No. 104 of 1971.

The complaint shall, in the result stand dismissed as having being withdrawn and being otherwise not maintainable for the simple and obvious reason that the complainant was not a worker concerned in the dispute and there was, therefore, no question of the contravention of the provisions of section 33 of the Industrial Disputes Act by dismissing her from service during the pendency of the said reference. There shall be no order as to costs.

Dated the 4th December, 1974.

O. P. SHARMA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 1695, dated 16th December, 1974.

Forwarded (four copies) to the Secretary to Government of Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

O. P. SHARMA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

The 11th December, 1974.

No. 11734-4Lab-74/44.— In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workmen and the management of M/s Globe Steels, Ballabgarh.

BEFORE SHRI O. P. SHARMA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA, FARIDABAD.

Reference Nos. 76,84,91 of 1972.

Between

SARVSHRI RAM PARSHAD, CHARAN SINGH AND HARBANS SINGH, WORKMEN CONCERNED AND THE MANAGEMENT OF M/S GLOBE STEELS, BALLABGARH

Present:—

Shri Madhu Sudan Saran Cowshish and Shri Amar Singh, for the workmen.

Shri H. R. Dua, for the management.

AWARD

Sarvshri Ram Parshad, Charan Singh and Harbans Singh, workmen concerned were in the service of M/s Globe Steels, Mathura Road, Ballabgarh. The Management allegedly terminated their services without any justification and in an illegal manner. They demanded reinstatement but without success. The conciliation proceedings started proceedings on their demand notices also ended in failure.

On receipt of the failure report in each case from the Conciliation Officer, the Governor of Haryana referred the disputes of the workmen concerned for adjudication to this Tribunal in exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 with the following term of reference, which is common in all the cases.

Whether the termination of the services of the workmen concerned was justified and in order? If not, to what relief is he entitled?

The parties put in their respective pleadings. The workmen reiterated their demands for reinstatement and payment of back dues as earlier raised through the demand notices leading to the present references and registered as Reference No. 76,84 and 91 of 1972. The management contested the claim of each and every workman on merits and raised several legal objections giving rise to the following issues which are common in all the cases and have been treated as preliminary issues:—

- (1) What is the effect of the liquidation proceedings alleged to be pending in the High Court of Delhi? (on management)
- (2) Whether the reference is bad in law for the reasons stated in the written statement of the management? (on management).
- (3) Whether the appropriate Government was the Delhi Administration to make the reference and not the Haryana State Government? (on management)
- (4) Whether the demand in question was first raised on the management and rejected by it before taking up the matter for conciliation? If not, with what effect?

The workmen concerned have made their own statements while on behalf of the management Shri J. C. Vig, Factory Manager, has come into the witness box. The documentary evidence produced in the cases consist of the postal receipt Exhibit W 1, A. D. receipt Exhibit W 2 and copy of the demand notice Exhibit W 3 by Shri Ram Parshad in reference No. 76, postal receipt Exhibit W1 produced by Shri Charan Singh in reference No. 84, copy of demand notice Exhibit W 1, postal receipt Exhibit W 2 produced by Shri Harbans Singh Rajput in reference No. 91. He has also proved the demand notice Exhibit W 3 which form part of the reference. No document has been produced on behalf of the management.

Arguments have been addressed at considerable length on both sides and I have given a careful thought to the material on record. This judgement will dispose of all the three references, their being common questions of law and fact involved in all the cases. The issues may be taken up separately.

Issue No. 1.—It has been argued on behalf of the management that since liquidation proceedings are pending before the High Court at Delhi in respect of the respondent, concern, the reference of the present dispute is bad in law and invalid. I am afraid the contention has not force not has the learned representative of the management referred me to any law on the point in support of the above plea that the appropriate Government was debarred from making the reference under section 10 of the Industrial Disputes Act, 1947 on account of the pendency of the liquidation proceedings before the High Court. Hon'ble the High Court has not been pleased to issue any order regarding the stay of the present proceeding. The issue is, therefore decided against the management.

Issue No. 2.—It has been argued that M/s Globe Steels Ballabgarh has no legal entity and is a division of M/s Globe Motors Ltd ; New Delhi and as such the reference against M/s Globe Steels, Mathura Road, Ballabgarh is illegal and without jurisdiction. This contention again is without force. The concerned is being run at Ballabgarh in the name of M/s Globe Steels Mathura Road, Ballabgarh and the workmen concerned in all the references were working there. The demand notices whereupon conciliation proceedings were started were also given to the Factory Manager M/s Globe Steels, Mathura Road, Ballabgarh. It can not, therefore, be said that the present reference had been made without impleading the proper party as the management in each case. The issue is held accordingly in favour of the workmen.

Issue No. 3.—It has vehemently argued that the Head Office of the Globe Motors Ltd ; being at New Delhi, the Government of Haryana had no jurisdiction to refer the disputes for adjudication to this Tribunal, the appropriate Government being the Delhi Administration. This contention again is without any substance for the simple and obvious reason that the factory where the workmen concerned were in service is situated at Ballabgarh and the business of the concern is also carried on at Ballabgarh. Moreover, as admitted by Shri J. C. Vig, Factory Manager, the wages to the workers are disbursed at Ballabgarh and the over all control in the factory is that of the Chief Executive who is posted at Ballabgarh. In the circumstances it can not by any stretch of imagination be held that the Appropriate Government to make the references in respect of the present workmen is not the Haryana Government but the Delhi Administration. The issue is, therefore, decided against the management.

Issue No. 4.—The management has raised a specific plea in the written statement in each case that no demand was first raised on the management and rejected by it before taking up the matter for conciliation and, therefore, no industrial dispute existed within the meaning of law which could validly be referred for adjudication. This plea does not appear to be without force. The law is very well settled on the point. As held by Hon'ble the Supreme Court in the of-quoted Sindhu Re-settlement Corporation case the demand has first to be raised on the management and rejected by it before taking up the matter for conciliation so as to constitute an industrial dispute as defined under section 2 (j) of the Industrial Disputes Act, 1947. The burden was on the workmen concerned in the present reference to establish this fact by leading cogent and convincing evidence. On a close scrutiny of the evidence produced on both sides, oral as well as documentary. I am constrained to observe that the workmen have failed to discharge this burden.

They have relied on their own oral statement and copies of the demand notices given to the management. According to them they had first approached the management for reinstatement and given demand notices direct before taking recourse to conciliation proceedings. This contention is, however, not warranted by the facts on record. The demand notice Exhibit W-3 given by Shri Ram Parshad in reference No. 76 is of 29th June, 1972 and addressed to the Factory Manager. Five copies of this demand notice are shown to have been given to the Conciliation Officer on the same day. It can not, therefore, be held that the demand had been first raised on the management and reasonable time had been given to it to consider the demand within the meaning of the law, as laid down in the aforesaid Authority before taking up the matter for conciliation so as to constitute an industrial dispute. I have been referred to postal receipt Exhibit W-1 and A. D. receipt Exhibit W-2 which are of earlier dates and it has been stated that the demand notice had been given to the management before starting the conciliation proceedings. No copy of that earlier demand notice said to have been given to the management direct has been produced nor is there any corroborative evidence to substantiate this allegation. The demand notice Exhibit W-3 is silent on this point. The plea of the management raised in the written statement read with the statement on oath of the Factory Manager that the demand was never received direct from this workman has, therefore, got to be believed.

The case of Shri Charan Singh in reference No. 84 on this point is no better. He has relied upon the postal receipt. Exhibit W-1 which is of 22nd May, 1972. The demand notice which was given to the Conciliation Officer and which forms part of the reference is of 20th May, 1972 and 5 copies of this demand notice were simultaneously sent to the Conciliation Officer. There is a printed endorsement on the foot of the demand notice that the demand notice had been served on the management 4 days earlier but the management was not willing to agree to the demand of the workmen. No evidence worth consideration has been brought on record to show that any demand notice had been given direct to the management 4 days prior to 20th May, 1972 nor that the copies of the demand notice had been delivered in the office of the Conciliation Officer on any subsequent day.

Similarly in the case of Shri Harbans Singh Rajput in reference No. 91, the demand notice Exhibit W-3 is also of 20th May, 1972 which is addressed to the Factory Manager and 5 copies of the same are shown to have been sent to the Conciliation Officer simultaneously. The postal receipt Exhibit W-2 is of 22nd May, 1972 which also proves goes to show that the demand notice was given both to the management and the Conciliation Officer on 20th May, 1972. Shri Harbans Singh Rajput has brought on record another copy of the demand notice exhibit W-1 which is also of 20th May, 1972 and an attempt has been made to show that it was delivered in the conciliation office on 29th May, 1972. On the face of it the date of receipt 29th May, 1972 on this demand notice appears to have been subsequently altered from 20th May, 1972 which fact finds support from another strong circumstances on record. The demand notice which was sent by the Conciliation Officer to the Government along with his failure report on the basis of which the reference was made is of 20th May, 1972 and there is no such endorsement on this demand notice that it was received by the Conciliation Officer on 29th May, 1972. In view of the material alteration which has apparently been made in the said endorsement regarding the date of the receipt of the copy of the demand notice Exhibit W-1 in the conciliation office no reliance can safely be placed upon this

document and the contention raised on behalf of the workman that he had raised the demand direct on the management before taking up the matter for conciliation can not be believed.

So, on the facts established and for the reasons aforesaid I am of the considered view that the workman concerned had not properly raised the dispute by first making their demands direct on the management so as to give it reasonable time to accept or reject the same before taking up the matter for conciliation and, as such, there were no industrial dispute within the meaning of the law which could validly be referred for adjudication. The issue is accordingly decided against the workman and in favour of the management.

In view of my above finding on issue No. 4, it is not necessary to go into the merits of each case because in the absence of any industrial disputes existing between the parties, no valid references could be made by the Government for adjudication of the demands, the subject matter of the present references which shall, in the result stand rejected as being bad in law and without jurisdiction. The award in each case is made accordingly but without any order as to costs.

Dated :—4th December, 1974.

O. P. SHARMA,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Endorsement No. 1669, Dated, Faridabad, the 4th December, 1974.

Forwarded (Four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

Dated :—The 4th December, 1974.

O. P. SHARMA,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 11732-4Lab-74/38061.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workman and the Management of M/s Laxmi Rattan Engineering Works, Ltd., Faridabad.

BEFORE SHRI O.P. SHARMA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA,
FARIDABAD
Reference No. 163 of 1974.

between

Shri Ganeshi and the management of M/s Laxmi Rattan Engineering Works Ltd., Faridabad.

Present.

Shri R.C. Sharma for the management.

Nemo for the workman.

AWARD

By order No. ID/FD/74/3557-61.—Dated 17th October, 1974 of the Governor of Haryana, the following dispute between the management of M/s Laxmi Rattan Engineering Works Ltd, Faridabad and its workman Shri Ganeshi was referred for adjudication to this Tribunal, in exercise of the powers conferred by clause (d) of sub-section (i) of Section 10 of the Industrial Disputes Act, 1947.

“Whether the termination of services of Shri Ganeshi was justified and in order? If not to what relief is he entitled?”

The parties were called upon to put in their respective pleadings. The workman concerned has not filed any statement of claim and he has further elected not to appear in person or through authorised representative to pursue his claim. The management, on the other hand, has pleaded that, as a matter of fact, it is a case of self-abandonment of service by the workman. Statement of Shri R.C. Sharma authorised representative of the management has been recorded. According to him, Shri Ganeshi the workman concerned had proceeded on leave from 21st September, 1973 to 5th October, 1973 and had applied for extension of the leave from 8th October, 1973 to 31st October, 1973, which was allowed. He has further stated that another application Exhibit M. 2 was received from him for the extension of his leave till 21st November, 1973 which was also sanctioned. However, he did not report for duty after the expiry of the said leave nor was any request received from him,

for further extension of the leave and after waiting till the end of November, 1973, his name was struck off the rolls with effect from 1st December, 1973 and this very plea had been taken before the Conciliation Officer, — vide his report Exhibit M. 4 received along with covering letter Exhibit M. 5 and comments of the management Exhibit M. 6. He has further referred me to the letter written by the workman on 23rd February, 1974 Exhibit M. 3 wherein he has admitted in clear words that he had come to the factory only on 8th February, 1974.

In view of the facts discussed above which stand unrebutted I am quite clear in my mind that it is a case of self abandonment of service by the workman himself who is not even come forward to pursue his claim. In the circumstances, the question of the termination of his services by any act of the management does not arise nor is the management called upon to justify the same.

It thus being a case of self abandonment of service by the workman no industrial dispute existed between the parties which could validly be referred for adjudication. Even otherwise the workman is not entitled to any relief by way of reinstatement or payment of back wages on account of his own conduct. The award is made accordingly. No order as to costs.

Dated 4th December. 1974

O. P. SHARMA,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 1670, dated 4th December, 1974.

Forwarded (four copies) to the Secretary to Government of Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

O. P. SHARMA,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

The 26th December, 1974

No. 11622-4Lab-74/38051.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to 'published the following award of the Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workmen and the management of M/s Havels Electrical Sales Corporation, Faridabad.

BEFORE SHRI O.P. SHARMA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA,
FARIDABAD

Reference No. 80 of 1969

Between

The workmen and the management of M/s Havels Electrical Sales Corporation, Faridabad.

Present.—

Shri Sagar Ram Gupta, for the workmen.

Shri Sudhir Kumar Chadha, for the management.

AWARD

The workmen of M/s Havels Electrical Sales Corporation, Faridabad raised certain demands regarding fixation of grades and scales of pay, introduction of gratuity scheme, supply of uniforms and payment of bonus for the year 1967-68 at 20 per cent of their annual earnings which were not conceded by the management. This gave rise to an industrial dispute. On the demand notice dated 31st July, 1969 conciliation proceedings were started which also ended in failure.

On receipt of the failure report from the Conciliation Officer, the Governor of Haryana, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, referred

the dispute for adjudication to this Tribunal,—*vide* order No. ID/FD/455-A/30874, dated 24th November, 1969, with the following terms of reference :—

- (1) Whether the grades and scales of the workmen should be fixed, if so, with what details and from which date ?
- (2) Whether gratuity scheme should be introduced in the Factory ? If so, with what details and from which date ?
- (3) Whether the workmen are entitled to the grant of bonus for the year 1967-68 ? If so, with what details ?
- (4) Whether all the workmen of the Factory should be provided uniforms ? If so, with what details and from which date ?

The parties put in their respective pleadings. The workmen reiterated their demands as earlier raised through the demand notice which forms part of the reference. The management contested their demand raising certain legal objections giving rise to the following four preliminary issues :—

- (1) Whether the dispute has not been espoused by a substantial number of workmen and Havells Workers Union has no locus standi to represent the interest of workmen ?
- (2) Whether the dispute has not been raised in accordance with the scheme of the Industrial Disputes Act and as such this reference is bad ?
- (3) Whether the settlement dated 20th September, 1961, has been duly terminated, if not, what is its effect ?
- (4) Whether the award published in the Gazette dated 10th June, 1967, has been terminated ? If not, what is its effect ?

After considering the evidence produced on both sides, my learned predecessor disposed of the above preliminary issues,—*vide* his order dated 1st May, 1970, finding all the issues in favour of the workmen and against the management.

Thereafter, the case proceeded for determination of the issues on merits as per the term of reference stated above. Three witnesses were examined on behalf of the workmen and they obtained an adjournment for filing some documents. In the meantime the management filed an affidavit under the signatures of Shri H.R. Gandhi, Sole Proprietor of the concern to the effect that the business had been closed since 31st March, 1971 and the dues of the employees including bonus had been paid, in full and final settlement of their entire claims. The plea of the management regarding the closure of the factory was not disputed on behalf of the workmen concerned. It was, however, contended that there had been no settlement with regard to the bonus claimed by them at 20 per cent and no payment had been made by the management on account of bonus for the period in question.

The management has examined two witnesses on the above issue regarding full and final settlement of the dues of the workmen including Shri O.D. Sharma, Labour Inspector, and Shri A.D. Seth, Manager of the factory. One voucher of payment of Rs 1,445 to one of the workers Shri Gopal Dass has also been produced. Quite a number of vouchers showing the payment to the other workers were also brought to the Court but the same were not produced and got exhibited.

According to Shri O.D. Sharma, one Shanker Lal Misra had made a complaint regarding non-implementation of an earlier award dated 1st March, 1971, whereupon the parties were summoned who arrived at a settlement and a sum of Rs 3,200 was paid to Shri Shanker Lal against receipt Exhibit M.W.1/1 which was attested by him. He further deposed that some applications were pending before the Authority under the Payment of Wages Act and the above payment of Rs 3,200 was made in full and final settlement of the claim arising out of the award and the said application pertaining to the payment of earned wages, leave wages, notice pay, service compensation and bonus for the years 1967-68, 1968-69, 1969-70. In cross-examination, Shri O.D. Sharma could not give the break-up of the above figures of Rs 3,200. He further stated that no calculations regarding bonus had been made in his presence nor had any balance-sheet etc. been produced; in fact the parties had themselves settled the dispute.

Shri A.D. Seth, M.W. 2, has deposed that the factory had been closed since 31st of March, 1971 and there had been no business thereafter. According to him the accounts of all the workers were checked and full and final payments of their dues were made. In cross-examination, he has stated that the vouchers of the payment said to have been made to the workers concerned do not show the amount of bonus paid to each and every worker for the year in question. He has further stated that bonus was paid to the workers after the necessary calculations had been made by the Accountant and these calculations had been accepted as correct by the workers although there was no written agreement with the workers regarding the percentage of bonus which was to be paid to them for each year. He, however, further stated that the workers had been paid bonus at 4 per cent for the years 1967-68.

1968-69 and 1969-70. He could not give the details of the profit and loss accounts for the said year but stated that the concern had been running into losses.

On the other hand, Sarvshri Gopal Dass and Shanker Lal Misra, General Secretary of the union, have appeared and sworn testimony to the fact that there had been no settlement with the management regarding bonus for any year.

The case has been argued on both sides and I have given a careful thought to the material on record. Since the factory has admittedly been closed with effect from 31st March, 1971 and there has been no worker on roll and consequently no business of the concern, the question of the fixation of the grades and scales of pay of the workmen or the supply of uniforms to them does not arise for consideration. Similarly it is not necessary to go into the demand for the introduction of the gratuity scheme in the concern which has otherwise become infructuous because of the enforcement of the Payment of Gratuity Act, 1972.

The main and the only dispute of the workmen is with regard to the payment of bonus for the year in question covered by item No. 3 of the order of reference. The plea of the management, as already pointed out, is that on the closure of the factory the workmen had settled their entire claims and received payment of their dues including bonus against vouchers. No memorandum of settlement has been filed in the case in support of the above plea which has been specifically denied on behalf of the workmen concerned. The vouchers of the workers shown to the Court, two of which Exhibit M.W. 1/1 relating to Shri Shanker Lal and Exhibit M.W. 2/1 in respect of Shri Gopal Das produced in the case do not show what amount was paid to each and every worker concerned on account of bonus. The workmen have claimed bonus at 20 per cent of their annual earnings. The affidavit of Shri H.R. Gandhi, Proprietor of the concern, filed in the case even read with the vouchers referred to above can hardly take the place of a just and proper settlement of the dispute regarding the demand of the workmen for payment of bonus at 20 per cent of their annual earnings. The question has to be decided after following the entire procedure laid down in the Payment of Bonus Act, 1965 and the rules framed there under. The management has placed on record the balance-sheet etc. But the parties have yet to produce their evidence to determine the question as to whether the management had earned any profits during the relevant year and whether there was any surplus amount, after making the necessary deductions permissible under the law,

to determine the rate of bonus, if any, available to the workmen for this period. It will not be out of place to mention here that the workmen had raised regular disputes for payment of Bonus at 20 per cent of their annual earnings, for the years 1967-68, 1968-69, 1969-70 which are pending before this Tribunal and the management had full knowledge about the proceedings going on in the references pertaining to these disputes. It has not been explained as to what was the hitch in getting the impugned settlement recorded in the Court especially when no memorandum of settlement had been got executed between the parties. In the circumstances, the plea of the management that the dispute regarding bonus for the year 1967-68 stands settled by any mutual agreement between the parties can not be believed and the same is, therefore, repelled. The learned representative of the management has not been able to satisfy me to the contrary.

With regard to the remaining demands of the workmen relating to the fixation of grades and scales of pay, supply of uniforms, introduction of gratuity scheme covered by item Nos. 1, 2 and 4 of the terms of reference, they are manifestly not entitled to any relief on account of the closure of the factory, as already observed. An interim award is accordingly given against the workmen with regard to these three particular demands but without any order as to costs. The case shall, however, proceed further for the determination of the demand for bonus covered by item No. 3 of the order of reference. Issue notice to the parties for 5th December, 1974 at Bahadurgarh.

O.P. SHARMA,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Dated the 27th November, 1974

No. 16511, dated 28th November, 1974.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

Dated the 28th November, 1974.

O. P. SHARMA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.